

MINUTES
BOARD OF FORESTRY
November 1, 2, & 3, 1999
Sacramento, California

MEMBERS PRESENT:

Robert J. Kerstiens, Chairman
Stan Dixon
Raymond Flynn
Robert Heald
Kirk Marckwald
Tharon O'Dell

MEMBERS ABSENT:

Darryl Young

BOARD STAFF PRESENT:

Christopher P. Rowney
Executive Officer
Daniel R. Sendek
Executive Officer, Foresters Licensing
Donna Stadler, Executive Assistant

DEPARTMENTAL STAFF:

Andrea Tuttle, Director
Woody Allshouse, Chief Deputy Director
Ross Johnson, Deputy Director
Resource Management
Dean Lucke, Assistant Deputy Director
Dennis Hall, Regulations Coordinator

CALL TO ORDER

Chairman Kerstiens called the November 1999 Board of Forestry and Fire Protection meeting to order.

MINUTES

Chairman Kerstiens asked for approval of the Board's October 1999 minutes.

99-11-1 Mr. Flynn moved to approve the October 1999 minutes as amended. Mr. Dixon seconded the motion, and all were in favor.

CHAIRMAN'S REPORT

Chairman Kerstiens reported that member Dixon would chair the Resource Protection Committee. He requested the Department provide a short briefing on how the Fire Plan is working in the Ranger Units.

Mr. Wayne Mitchell, CDF, Fire Protection Planner, provided the Board with packets containing maps, the Draft Fire Management Plan, and an outline of the Fire Plan. He reviewed the packet with the Board.

Chairman Kerstiens asked the Department to report on the stakeholders in each county. He then asked about the Fire Alliance.

Mr. Mitchell said that the Alliance met last summer. He would report on the stakeholders at another time.

Director Tuttle said that the Department could give a more complete report of the Fire Plan at the Board's convenience.

Mr. Christopher Rowney, Executive Officer of the Board, said that after the first of the year would work best for a report from the Department on the Fire Plan.

DIRECTOR'S REPORT

Director Tuttle began her report by introducing the Board to several programs of the Department; the Fire Plan, State Demonstration Forests, the VIP, Stewardship, VMP, and Urban Forestry Program. In response to member Dixon's request of last meeting, she provided the Board with a copy of the departmental report entitled *Cumulative Impacts Analysis*. Director Tuttle then briefly reviewed the report with the Board. She said that it is an informational report that may help the Board in its ongoing discussions on cumulative effects and the Forest Practice Rules.

Woody Allshouse, Chief Deputy Director, reported on the fire season. He said that the fire season was winding down. The fire season has been closed in Lassen, Madera, and Siskiyou Counties. However, normal staffing will continue South of the Tehachapies. He reported that the Department would be asking for a deficiency bill in the early spring due to expenditures in this late fire season. He then provided the update on recent fires.

Chief Allshouse then reported that Karen Savage, a Junction City volunteer firefighter, was killed when their truck ran over her while fighting the Jones fire.

Chairman Kerstiens asked about the heat exhaustion issue.

Chief Allshouse said that it is still a problem, but not as bad as in past years. This winter the Department will be looking at the heat issue again and testing new Nomex shirts.

Chairman Kerstiens requested that the Department give a presentation on the retirement issue its facing.

Chief Allshouse said that there are three parts to the changing face of CDF; classification, training, and recruitment/retention. He said that the problem begins in June 2000. He then reviewed each step for the Board.

Chairman Kerstiens suggested that the Department make a full report to the Board after the first of the year.

REPORT FROM INFORMATION TECHNOLOGY ON THE DEPARTMENT'S Y2K PREPARATIONS

Mr. Gregory Schuett, CDF's Chief Information Officer for Information Technology (IT), provided the Board with handouts and an overview of CDF's compliance for Y2K. He then said that IT would be staffed five days prior to the event and three days following.

REPORT FROM FEDERAL AGENCIES INCLUDING AN UPDATE ON THE STATUS OF ANADROMOUS SALMONIDS FROM THE NATIONAL MARINE FISHERIES SERVICE

Mr. Joe Blum, National Marine Fisheries Service (NMFS), said that the NMFS was under litigation in the Northwest Region and in its region with respect to a failure to issue 4(d) rules for Steelhead, Chinook, Sockeye, and Coho Salmon. That lawsuit has been settled.

The settlement included a schedule for issuing proposed 4(d) rules. He said that in California that covers the Central California Coast, the South Central California Coast, and the Central Valley. NMFS will issue a proposed 4(d) rule for Steelhead around the 15th of December. There will be public hearings and about 60 days for public comment. NMFS has also agreed to a provision that it would submit the final 4(d) rule for those ESUs that it is proposing in December to the Federal Register in June of 2000.

Mr. Blum said that NMFS is very close to issuing a "harm" rule, which is a definition of the word "harm" as it appears in the Endangered Species Act. That rule should be out by next week. He then talked about the implementation of the PL HCP and provided some background for the Board. The latest issue was the watershed analysis provision, which is one of the major provisions of the HCP. Freshwater is the watershed that was initially selected for the first watershed analysis. It was originally scheduled to be completed last month, but it will probably be the first quarter of next year.

STANDING COMMITTEE REPORTS

RESOURCE PROTECTION COMMITTEE

Chairman Kerstiens reported that the Region Chiefs were not present, however, they provided copies of their reports. He said that there was a brief presentation on the Meadow Vista PTEIR and that he requested a full presentation on the process at a later date.

Mr. Dixon said that most of what was covered in Committee was covered by the Director's report. He then said that he felt as though he had his orientation to the fire side of CDF and was very impressed.

INTERIM COMMITTEE

Mr. Heald, Chair of the Interim Committee, reported that the Committee broke-out into small groups before meeting as a full Committee in an effort to expedite discussions. One group looked at the 2090 agreement for Salmon South of San Francisco as a role model for the Coho issue. Another group looked at crossings, roads, and channel zone issues. A third group discussed the Sensitive Watersheds 303(d) listings. Some of the groups produced drafts on how to deal with issues. The full Interim Committee will need to meet in mid November and one day in December. The Committee hopes to be ready to present to the full Board with 45-Day Notice language. He said that the Committee also discussed the regulatory calendar for the year 2000 and broached the issue of the LTO and RPF responsibilities.

PRESENTATION BY THE DEPARTMENT ON THE NONINDUSTRIAL TIMBER MANAGEMENT PLAN PROCESS (NTMP)

The Department provided a power point presentation on the NTMP process as requested by the Board.

Some discussion followed the presentation.

Mr. Dan Weldon, FLOC, said that the FLOC was among the original sponsor of the NTMP Legislation. The FLOC represents approximately 30,000 Nonindustrial Timber Landowners. He said that 10 years after the legislation passed, there was to be a report on the success of the program--that report should be complete soon.

Ms. Helen Libeu said that how an NTMP is being achieved should be built into the approval of each NTMP. The main benefit is adaptive management, and having enough staff to monitor the plan to see what did happen is important. She said that in order to certify BMPs they need to be better defined. The NTMP process needs to be repaired, otherwise, she believes it to be an avenue for abuse.

Mr. Steve Butler said that the NTMP is a good process. Growth projections deal with planning growth over time. Certifying that timber is really there and time frames are very important.

Felice Pace, Klamath Forest Alliance, said that CDF should be able to respond to the question of the intent of the Legislature. Regarding the question of whether the use of rehabilitation to effectively clear-cut under a plan that does not allow clear-cutting, he asked CDF how much of each prescription is rehabilitation. If it is five percent then perhaps that is within the intent, however, if it is 50 percent then that probably is out of the intent.

Mr. Dean Lucke, Assistant Deputy Director, said that he was told that it was not a significant problem to the Department.

Mr. Richard Gienger said that the Board should come up with a monitoring program to deal with this issue. He believes that some NTMPs are greater than 2500 acres.

Mr. Lucke said that he would check on that, but he was not aware of any over 2500 acres.

Mr. Chuck Ciancio said that he thought a 10-year inventory was a requirement, and that half of his NTMPs have had rehabilitation.

REPORT OF THE USDA FOREST SERVICE (USFS)

Ms. Chris Nota, USFS, announced that Brad Powell was appointed the new Regional Forester of the Pacific Southwest Region, and that the Deputy position was now open. She then reported on fire suppression efforts on the Big Bar fire. There is a full review of the incident in progress and will be available upon completion. Next she reported on the Sierra Nevada Framework Project and said that the draft EIS is complete and the viability analysis is also complete. Now there will be a scientific review of the viability analysis. It should go out to public comment in January. The President's roadless initiative has two parts to it. It will look at the currently inventoried roadless areas, which are areas over 5,000 acres, also it will look at areas under 5,000 acres. There will be an EIS done, which should take about one year to complete. She said that this initiative should not have too great an effect in California. National Forest Management Act planning rules are being revised. They are now in the public comment period. This is the first time they have been revised in twenty years. The Forest Service is making an effort to streamline the process. There will be a town hall meeting on December 9, 1999, for people to give input.

Chairman Kerstiens asked if the fuels reduction issue would be addressed in the plan.

Ms. Nota said that the plan would not specifically address that issue. It will tell the FS how to do its forest plan in a more responsive manner. She then said that the Quincy Library Group (QLG) EIR has had 15 appeals to date.

Mr. Flynn asked about the timeframe on the QLG appeals period.

Ms. Nota said that the close period should be near, and that there is a set time to respond to those appeals.

Mr. Felice Pace, Klamath Forest Alliance, said that the environmental community would be evaluating this issue. When there is a big fire, the Forest Service does not put it out, it is going out with the weather change.

PRESENTATION OF GOLDEN TROWEL AWARD FOR EXCELLENCE IN ARCHAEOLOGICAL EFFORTS IN ASSOCIATION WITH FORESTRY PROJECTS

Mr. Dan Foster, Senior State Archaeologist with CDF, read his prepared statement describing the background of the Golden Trowel Award into the record. He then announced that this year the Awards Committee recommends that CDF Area Forester Tom Francis receives the Board's Golden Trowel Award.

Chairman Kerstiens presented Tom Francis with the Golden Trowel Award for his outstanding work in archaeological site identification.

Mr. Tom Francis, RPF, thanked the Department for offering the training necessary, and the Board for the honoring him with the Award.

Director Tuttle said that it is unusual that a CDF employee receive the Award and expressed her appreciation for a job well done.

**PRESENTATION BY UC EXTENSION INTEGRATED HARDWOOD RANGE
MANAGEMENT PROGRAM AND CENTER FOR FORESTRY REGARDING
CURRENT KNOWLEDGE AND RESEARCH NEEDS TO ADDRESS TANOAK AND
COAST LIVE OAK DIEBACK (IHRMP)**

Mr. Rick Standiford, UC of California IHRMP, provided the Board with a handout describing the Evaluate Insect/Disease Complex Causing Mortality in Tanoak and Coast Live Oak project. He explained the purpose and goals of the project. The specific goals were to develop the basic information on the mechanism causing this mortality, determine the extent of the pattern, develop management recommendations, and determine the long-term IHRMP response. He then reviewed the Action Plan and the Associated Programs from the handout for the Board.

There was some further discussion.

HEARING: Consideration of Petition for Rulemaking Submitted by Charles Ciano Pursuant to Public Resources Code §11340.

Chairman Kerstiens introduced the topic.

Mr. Charles L. Ciano read his written statement into the record. He then reviewed his petition with the Board.

Mr. Heald asked if the purpose of the petition is to require posting the notice only once regardless of how long things take.

Mr. Ciano said that it was.

Mr. Heald said that the Notice of Intent contains as estimated date, it may take longer.

Mr. Ciano thought it would be better not to put a date the notice.

Mr. Heald said that if it was returned and not acceptable for signing, then a re-posting would be necessary.

Mr. Dean Lucke, Deputy Director for Forest Practice, said that the Department believes that the petition is not necessary. The Department looks at the Notice of Intent at the start of the process. Once a THP has been submitted, then the Notice of Intent is posted. If the THP is rejected and re-submitted, then it is re-posted.

Mr. Heald said that if the plan is re-submitted and does not change the notice other than the date, it would seem that there is some leeway.

Mr. Lucke said that the Department does not believe that there is any leeway.

Ms. Deborah Barnes, Deputy Attorney General and Counsel for the Board, said that not requiring a new notice is problematic.

Mr. Flynn asked Counsel if it would still be problematic if CDF were to send back the plan.

Ms. Barnes said that if CDF rejected a plan for filing, then it should be re-noticed. Noticing is an area where the courts have not been very sympathetic.

There was then some discussion regarding numbering of a plan.

Ms. Helen Libeu said that the numbering of a plan is a non-issue. She spoke in favor of re-noticing. If something is wrong with the plan, then it should be re-noticed.

Mr. Dan Weldon, Forest Landowners of California (FLOC), said that FLOC would like to see the DTACs made active. There is no adequate way of reviewing proposals to get landowners views across. There needs to be better communication.

Mr. Steve Butler said that the plans are numbered and that noticing is not the only problem.

Mr. Lucke said that the Department does not number every plan. The law is clear—when the Department reviews a plan for filing, it requires that the plan be noticed.

Mr. O'Dell asked for reasons a plan might be rejected.

Mr. Lucke said that the Notice of Intent and archaeology are problems. If you discount these issues, then there is only a 17 percent rejection rate.

99-11-2 Mr. Heald moved to close the public hearing. Mr. Flynn seconded the motion, and all were in favor.

Mr. Heald said that he believes that the Board should have a forum for hearing these issues. Also, he said that there is a need to get to the people where there would be more committee time, or a local committee to discuss the issues.

Chairman Kerstiens said that the local groups and organizations needs to approach the Legislature in an effort to get the DTACs re-enacted.

Mr. Heald suggested that the Board should go to different areas once or twice a year.

Mr. O' Dell said that he believes that something needs to be done that allows the information to get back to the Board.

There was further discussion on ways to resolve the issue of getting information back to the Board without forcing people to use the petition method.

Mr. Lucke said that the Department has tried to do some outreaching, however, people cannot see enough change as a result of those meetings.

Mr. Heald suggested that a cost study on 3 DTACs be done for three meetings per year. Then the Board can go to the Department and then the Legislature.

99-11-3 Mr. Heald moved to deny the petition. Mr. Dixon seconded the motion, and all were in favor except Mr. O'Dell who abstained.

REPORT OF THE EXECUTIVE SESSION

Chairman Kerstiens reported on the Executive Session.

HEARING: to Consider an Appeal by the County of Santa Cruz of Approval of Nonindustrial Timber Management Plan (NTMP) 1-99-003 SCR

Chairman Kerstiens read his opening remarks regarding the order of hearing into the record.

Mr. Dean Lucke, Deputy Director for Forest Practice, made the introduction comments for the Department.

Mr. Roger Thompson, CDF, provided a Power Point presentation of riparian protection measures incorporated within the NTMP.

Mr. Norm Hill, Chief Counsel for the Department, said that the County has already zoned 1-NTMP-99-003 SCR and THP 1-99-009 SCR into WLPZ. He then provided a handout and read it into the record. He said that the Department believes that the zoning is preempted by state regulations.

Mr. Mark Deming, Santa Cruz Planning Department, said that the County adopted an ordinance and believes that it has the authority to govern its lands. He then referred to the proposed rules changes currently under discussion by the Board and said that there is no process to incorporate the changes in the plans to comply with those proposed changes.

Ms. Suzannah French, Santa Cruz County, said that the County submitted a letter on the issue and summarized points from that letter for the Board. The County has the authority to say where timber harvesting will occur under the California Timberland Productivity

Act. She said that the County believes that the NTMP fails to comply with CEQA and that the current Board rules are inadequate.

Mr. Marckwald asked if zoning inhibits harvesting overall.

Ms. French said that it must be looked at a case-by-case basis.

Mr. O'Dell asked if she considered 17 percent excessive "taking."

Ms. French said that she did not in this case, because she believes that the limit to harvest would be less than that.

Mr. Flynn asked if 85 percent was an excessive amount of canopy.

Ms. French said that they believe that there is some good mitigation measures within the plan, but indicated that the WLPZs were not.

Mr. Deming said that a good example would be the Agricultural Zone.

Mr. Dave Hope, Senior Resource Planner for Santa Cruz County, said that trees marked are not the only ones that would be cut over the long-term. The difficulty that the County has with the NTMPs is that it will not be allowed to go out and review them again. The County had not been called regarding condition of stream.

Mr. Dennis Kehoe, representing the Redwood Christian Association and Big Creek Lumber Company, reviewed two letters already in the administrative record for the Board. He then said that the Redwood Christian Association is a non-profit organization and this plan is essential for its livelihood. The next issue is dealing with compatibility. He said that TPA states preference for harvesting within TPZ, and lands once zoned as TPZ, are regulated solely by the Board of Forestry. He asked that the appeal be denied.

Mr. Jim Martin, Redwood Christian Association, said that they have been in business since 1947 as a non-profit organization helping people get away emotionally, physically, and spiritually. If the Association does not have Redwoods, it is out of business. The environment is very important to the Association.

Mr. Eric Huff, forester, explained what an NTMP means to him. He said that it gives him a chance to mitigate and do some good forestry and take care of the land at the same time. He believes in the NTMP and the process. It is an excellent plan.

Mr. Bob Berlage, Big Creek Lumber Company, said that Redwood Christian Association's concern is the well being on the long-term of its forest. He urged the Board to deny the County's appeal of the NTMP.

Mr. Mark Rentz, California Forestry Association (CFA), commented on both NTMP 003 and THP 009. He said that Big Creek Lumber is a member of CFA and they urge the Board to deny both appeals. CFA is concerned about a precedent that this would set. He said that CFA strongly urges the Board to reject the County of Santa Cruz Appeal of 1-99-NTMP-003 SCR and THP 1-99-009 SCR. The County has failed to demonstrate any need and is exceeding its authority.

Mr. Dan Weldon, Forest Landowners of California (FLOC), said the proposed NTMP was the way that the NTMP was intended to be used. He urged the Board to reject the appeal.

Mr. Jodi Frediani, Sierra Club, said that the NTMP is not the issue. The County has passed an ordinance. The issue is not the quality of the NTMP, the court needs to determine validity of the ordinance.

99-11-4 Mr. O'Dell moved to close the public hearing. Mr. Flynn seconded the motion, and all were in favor.

Chairman Kerstiens said that it appears to be a legal issue over authority.

Mr. Dixon said that he also believes it to be a legal issue. He said that in this case, he could not support the appeal. In his view, the Department did a good job in granting the NTMP.

Mr. Heald said that he also has a problem as to who has the authority. He said that the problem of jurisdiction should be handled in court. He believes that the plan is well constructed, it deals with the rules and regulations of the Board and that he was inclined not to grant the appeal.

Mr. Flynn said that he too believes that it is a legal issue. The plan is an excellent plan and he could not support the appeal.

Mr. O'Dell said that the plan was a good effort and he could not support the appeal.

Mr. Marckwald said that the problem is with statute and not with Board rules.

99-11-5 Mr. Flynn moved to reject the appeal by Santa Cruz County of 1-99-NTMP-003 SCR.

Ms. Deborah Barnes, Deputy Attorney General and Counsel for the Board, said that language 1055.6, Board rules governing the County appeal hearing procedure, says that if the Board determines that the plan is in conformance with the rules and regulations of the Board it shall make an order approving the plan. The Board's motion must include that you approve the plan.

Mr. Flynn amended his motion to "approve" the plan. Mr. O'Dell seconded the motion, and a roll call vote was taken.

Heald	Aye
Marckwald	Aye
Dixon	Aye
Flynn	Aye
O'Dell	Aye

Kerstiens

Aye

The motion passed by unanimous vote.

HEARING: to Consider an Appeal by the County of Santa Cruz of Approval of Timber Harvest Plan 1-99-009 SCR

Chairman Kerstiens read his opening remarks regarding the order of hearing into the record.

Mr. Dean Lucke, Deputy Director for Forest Practice, provided the Board with a Power Point presentation.

Mr. Roger Thompson, Big Creek Lumber, said that THP 1-99-009 SCR and the 1-99-NTMP-003 SCR are very similar. He explained why the 009 plan is in conformance with the rules. The THP contains Class I, II, and Class III watercourses with 85 percent retention in Class I, 75 percent in Class II, and Class III protection is provided by Equipment Exclusion Zones.

Mr. Heald asked about the mitigation measures regarding Kings Creek Road.

Mr. Thompson said that Kings Creek Road would have to be taken into consideration.

Mr. Norm Hill, Chief Counsel for the Department, said that the County has already zoned THP 1-99-009 SCR into TPZ. He then reviewed his previously provided handout for the Board. The Department believes that the County zoning ordinance is pre-empted by state regulations. CDF requests that the Board uphold the Department's approval of the plan.

Mr. Mark Deming, Santa Cruz Planning Department, said that the County appeals THP 1-99-009 SCR on the same grounds that it did 1-99-NTMP-003 SCR.

Ms. Suzannah French, Santa Cruz Planning Department, referred to her comments on 1-99-NTMP-003 SCR. She believes that the County ordinance should be applied. Applying the existing rules is not adequate. She asked that the Board grant the appeal.

Mr. Flynn asked if the Department of Fish and Game (DFG) reviewed the plan.

Ms. French said that as far as she knows the DFG made no comments.

Mr. Dave Hope, Senior Resource Planner for Santa Cruz County, said that the County is working on re-establishing and re-surfacing the road. This tributary road has a very high impact on the stream. He said that the property is in a very large landslide area. The main issue is cumulative effect. When considering the damage to this property in the past, it requires another level of review. The plan needs to address this stream.

Mr. O'Dell asked for clarification on the work done on the road in question.

Mr. Hope said that in the past 10 years the County has been trying to bring the road up to standards. He said that the County employees have only been working on that section of the road for four or five years. He believes that most of the activity had been during the summer months.

Mr. O'Dell said that he could not understand why the dumpsite problem was not discovered earlier.

Mr. Hope said that he did not have an answer for that.

Mr. Dennis Kehoe, representing the Redwood Christian Association and Big Creek Lumber Company (plan submitter), referred to his comments on 1-99-NTMP-003 SCR. He said that the plan submitter had no knowledge of the dumpsite in question until the pre-harvest inspection. The funds to clean up the dumpsite will come from the timber harvest. Also, on the harvest inspection, the County was there as well as the Department of Fish and Game and there were no objections. This is an excellent plan in accordance with the Forest Practice Rules. He urged the Board to deny the appeal and approve the plan.

Mr. Eric Huff, RPF, representing Big Creek Lumber Company, said that the WLPZ was on the Neighbor's property. He said that the 2090 Agreement is effective and enforceable. The dumpsite should not have been missed, however, the THP allows for clean up. He said that the review team process works.

Ms. Katherine Floreoni, with the Institute of Heart Math, reiterated that the property owners are a non-profit organization and the funds from the harvest are needed to clean up the dumpsite. The site would have to be cleaned up anyway, however, it would be very expensive. The plan was started in 1998 and the association knew nothing of the County ordinance. Without the THP, cleaning up the dumpsite would have a huge impact on our non-profit association.

Mr. Flynn asked what was the total volume they would be losing.

Mr. Erick Huff said that the total volume would be between 200,000 and 300,000 board feet.

Mr. Mark Rentz, California Forestry Association (CFA), referred to his earlier comments. He said that if the Board refers to 1055.6 of the California Code of Regulation, then it must find that this plan is in conformance. He urged the Board to approve the plan.

Ms. Jodi Frediani, Sierra Club, referred to her earlier comments. She said that the dumpsite needs cleaning up whether or not the plan is approved. The association could get the funds elsewhere. It needs to stay out of the riparian corridors.

Mr. Kent Stromsmoe said that what monies are used to fix a problem should not be a consideration. The County's rules are only a fraction of what is needed.

Mr. Flynn asked the Department if the DFG had any comment.

Ms. Nancy Drinkard, CDF, said that DFG expressed concern and told the proponents to handle the situation.

Mr. Eric Huff said that the plan meets all the rule requirements.

99-11-6 Mr. Marckwald moved to close the public hearing. Mr. Heald seconded the motion, and all were in favor.

Chairman Kerstiens said that he believes that the dumpsite should have been cleared up several years ago. He said that the main problem goes back to the legal issue of concept.

Mr. Dixon said that there are variables in this THP. He also believes that it is a legal issue. He said that the Department did its job well.

Mr. Flynn said that he believes that it is a legal matter.

Mr. O'Dell said that the Board's discussion should be whether or not it complies with the Forest Practice Rules.

Mr. Heald expressed concern over the potential disturbance is and said that the plan may not be fully integrated.

99-11-7 Mr. O'Dell moved to approve the plan. Mr. Flynn seconded the motion, and there was a roll call vote:

Heald	Aye
Marckwald	Aye
Dixon	Aye
Flynn	Aye
O'Dell	Aye
Kerstiens	Aye

The motion passed by unanimous vote.

ADVISORY COMMITTEE REPORTS

PROFESSIONAL FORESTERS EXAMINING COMMITTEE (PFEC)

Mr. Daniel R. Sendek, Executive Officer for Professional Foresters Registration, referred to the Board's binder and the RPF Vital Statistics. He said that the following RPFs have not renewed their licenses per 14 CCR § 1607(c): Sam Alfano, RPF 561; Dean Angelides, RPF 2009; George Bernard, RPF 2169; Denton Bungarz, RPF 1441; John Connolly, RF 1879; Thomas Costello, RPF 1313; Jerry Creason, RPF 1271; William

Delimont, RPF 2101; Vaughen Landrum, RPF 2389; David McHardy, RPF 1589; Stephen Morse, RPF 2017, Barritt Neal, RPF 1459; Donald Soukup, RPF 339, Robert Stephens, RPF 153; William Wallace, RPF 2063, and Martin Warne, RPF 1361. He then asked that the Board take the appropriate action.

99-11-8 Mr. O'Dell moved to accept the recommendation to revoke the licenses of the above named RPFs. Mr. Dixon seconded the motion, and all were in favor.

Mr. Sendek then read the names of the RPFs that have not reinstated from withdrawal status per 14 CCR § 1608(d) into the record: Norman Bjorklund, RPF 1136; William Boodt, RPF 1133; Rex Coalson, RPF 1569; Walter Francis, RPF 1641; James Holderman, RPF 1619; William Rus, RPF 345; Herbert Savercool, RPF 593; Norman Scott, RPF 989; and James Shiro, RPF 63. He then recommended that the Board take the appropriate action.

99-11-9 Mr. O'Dell moved to revoke the licenses of the above named RPFs for not reinstating from withdrawal status. Mr. Flynn seconded the motion, and all were in favor.

HEARING: To Consider Amendments to Sections 1104.1 and 1052 of the California Code of Regulations

Mr. Dennis Hall, Regulations Coordinator for the Board, provided some background on this issue. He said that the package had been submitted to the Office of Administrative Law (OAL) and sent back with a list of concerns. OAL brought up some clarity issues. He then reviewed those concerns with the Board. He said that OAL had concerns regarding consistency with CEQA, however, those concerns would be addressed in the 15-Day Notice. OAL also felt that the response to comments were not adequate. He then reviewed the 15-Day Notice for the Board and said that the intent is to have the package back to OAL in time to become effective by January 2000.

Mr. Douglas Ferrier, private consulting forester, said that his only concern would be with the original OAL disapproval letter. The letter states that it is a discretionary project and the reason for the package was to make it non-discretionary.

Mr. Rowney said that there were two court cases that dealt with non-discretionary kinds of projects. The 3-acre exemption was struck down because it was an exclusionary listing of those projects that could be identified in statute under the exemption process--it was adoption by regulation. The other was Westhaven which dealt with a different project that used the term "may include" and gave a list of kinds of projects that would be non-discretionary exemptions.

Ms. Deborah Barnes, Deputy Attorney General and Counsel for the Board, said that if the Board would like a fuller discussion of this issue should be on the agenda for next meeting. She said that OAL did not see this question as a pivotal point in this rules package. In terms of ministerial projects and being exempt from CEQA, CEQA does provide for certain exemptions from the CEQA process. In terms of the Forest Practice Act, there are certain exemptions to the preparation of a THP. She went on to explain the reason for the denial of the 3-acre exemption.

Mr. Kent Stromsmoe said that he had a problem with non-ministerial permits. He reminded the Board that the changes that OAL proposes leaves the question of what happens when an operator has no weather report of rain on a Friday before a three-day weekend and it rains over that weekend.

Mr. Marckwald referred to the letter from Forest Unlimited, in the Board's binder, regarding the proposed changes. The letter implies that the rules are going backwards as far as any protection of sensitive species, and asked board staff to comment.

Mr. Hall said that the letter addresses issues that are not germane to the 15-Day Notice. The only change is to add, "shall occur."

Mr. Flynn said that it is a misunderstanding as to what the 15-Day Noticed language is.

Mr. Stromsmoe said that this rule is the only place in the Resource Codes that give the Plant list any status. He expressed concern that the 3-acre conversion status could be used as a tool to extirpate the population of such species. Also, a newly discovered species on a property could be sanitized by the use of the 3-acre conversion.

Mr. Heald said that the Forests Forever letter listed the California condor, great gray owl and the marbled murrelet. The condor and the marbled murrelet are listed species already.

Mr. O'Dell said that the great gray owl is covered under the Migratory Treaty Bird Act.

Mr. Heald asked Board staff if OAL would approve the language if the Board were to strike the 9/99 on page one line 9.

Mr. Hall said that OAL requires a date on any referenced forms.

Mr. Flynn asked that the Department respond to the weekend issue.

Mr. Lucke said that the rule now reads, within the next 24 hours. That does not relieve the weekend situation. To be on the safe side, it should be done on Friday so that they do not have to worry about it. The Department would hold to the letter of the law that is now 24 hours.

Chairman Kerstiens asked for a motion to close the public hearing.

99-11-10 Mr. Heald so moved. Mr. Flynn seconded the motion, and all were in favor.

99-11-11 Mr. Heald moved to adopt the 15-Day Noticed language. Mr. Flynn seconded the motion, and all were in favor.

DISCUSSION OF RULEMAKING PROPOSAL AFFECTING REGISTERED PROFESSIONAL FORESTER (RPF) AND LICENSED TIMBER OPERATOR (LTO) RESPONSIBILITIES ASSOCIATED WITH TIMBER HARVESTING

Chairman Kerstiens opened the discussion by stating this is not a hearing item at this time.

Mr. Dean Lucke, Deputy Director for Forest Practice, said that the Department has been advocates having RPF responsibility on timber operations and is in favor of the proposal.

Mr. Christopher Rowney, Executive Officer for the Board, said that at the last meeting, the Board asked staff to develop language and bring it back to the Board. He said that the question is whether or not to put out a 45-Day Notice on the proposed language.

Mr. O'Dell said that his is going to generate a lot of discussion and that the discussion should be at the Committee level. He believes that a notice may be premature.

Chairman Kerstiens said that he also believes that the package should go to Committee.

The Board discussed its options.

Mr. Heald said that in his view, people need actual language to discuss and that would mean putting out a 45-Day Notice.

Mr. Marckwald asked if a notice could be sent out that it was going to the Interim Committee.

Mr. O'Dell said that he believes that would oblige the Board to hold a hearing in 45 days.

Mr. Rowney said that the hearing date would be whatever date was set in that notice. The notice establishes the earliest that a hearing could be held. A 45-Day Notice is good for one year.

Mr. Flynn expressed concern that the RPFs and the LTOs be allowed adequate time to provide input.

Mr. Heald said that his concern is the mechanism to make this language available to everyone so that it is understood that the Board is serious about discussing this issue.

Mr. Rowney explained the options to the Board.

Mr. Jerry Ahlstrom, CDF, reminded the Board that the 621 language which says that any rules adopted that go into effect in July only apply to THPs approved after that July 1, 2000.

Mr. Heald said that if the rule adopted on the first of January, would the Department require plan submitters to already had approved plans to go back and hire an RPF.

Mr. Ahlstrom said that he didn't know.

Mr. Rowney suggested that it would be an operational rule.

Mr. Ed Ehlers, Associated California Loggers (ACL), said that ACL received the language and that it raises considerable concern regarding its independent contractor's status. ACL believes that there are some legal issues with the notice. He said that ACL urges that the Board not set a hearing until it can look into the legality issue.

Mr. Mark Rentz, California Forestry Association (CFA), said that CFA does not have a position on RPF responsibility at this time and would like to research the issue.

Mr. Steve Butler said that he supports going forward with the language. He said that the RPF is already required to provide oversight during operations in Santa Cruz County.

Mr. Richard Gienger said that he believes that the language should go out for a 45-Day Notice.

Chairman Kerstiens asked for Board discussion.

Mr. Dixon said that there has been a lot of discussion on the need for a package like this one. It believes that it is important to hear the dialogue.

Mr. Marckwald said that he would like to support getting something out with a long enough lead-time for the Interim Committee look into the substantive, policy, and the legal issues.

Mr. O'Dell asked if it could be advertised as a Committee item without a 45-Day Notice. He said that he would like to get the discussion started. The winter months are a good time to talk about this issue.

Mr. Heald suggest that the language be sent out with a notice for a meeting for discussion at the Committee meeting and be put on the January agenda for consideration as a 45-Day Notice.

Mr. O'Dell said that he liked that suggestion.

Mr. Rowney said that the January agenda could be published with a note that the suggested language is available at the office and put it on the Board's Web page in December.

The Board then directed staff to proceed with the January agenda as suggested.

CONTINUED ADVISORY COMMITTEE REPORTS

RANGE MANAGEMENT ADVISORY COMMITTEE (RMAC)

Mr. Tom Randolph, Secretary for RMAC, reported that during the Committee's meeting held in October, the Board's Executive Officer provided a briefing on the rules package that the Board is reviewing. He said that the ranches are very interested in the impact that timber harvesting may have on their integrated operations. Also the BLM provided a

briefing on its standards and guides for the BLM rangeland. He said that the Water Quality Subcommittee of RMAC is working with University of California Extension and the Resources Agency to develop a training class to address cooperative range issue. There is concern among some ranchers that when talking to different agencies, they receive different information. The classes will be given in Ukiah, Eureka, Redding, Lake Tahoe, Sacramento, and in the south coast area. The UC Extension also briefed the RMAC on riparian grazing practices.

Mr. Randolph said that the RMAC's Public Lands Subcommittee is developing a response to the USFS Sierra Nevada Framework EIS. He then said that RMAC's Fire Protection Management Subcommittee is looking at USFS responses to the major fires in California and the draining of CDF resources for protection of State Responsibility Areas. The Noxious Weed Subcommittee is sending a letter to Director Tuttle asking for support for the Food and Agriculture's BCP. He said that the Governor, with a significant dollar reduction, had signed the Noxious Weed Bill 1168. RMAC is looking to the Department of Forestry and the Resources Agency to help secure the additional funding necessary in the effort to control the Noxious Weed in California.

CALIFORNIA FOREST PEST COUNCIL (CFPC)

No report was given this month.

PUBLIC FORUM

Mr. Mark Rentz, California Forestry Association (CFA), provided the Board with a copy of the General Forest Practice Comparison between California, Oregon, and Washington and reviewed it for the Board. He then provided the Board with copies the 1998 report of the Fish, Farm, and Forest Communities Forum, the Watershed Processes and Erosion Control (A Workbook and Compendium) and reviewed it for the Board. He said that it was an ongoing project that would be improved over time.

Mr. Doug Ferrier, California Licensed Forestry Association (CLFA), reported that CLFA hosted a watershed workshop and that 250 had signed up to attend and 275 people were there. There were a lot of positive comments. He then provided the Board with a list of upcoming workshops.

Mr. Richard Gienger asked that the Board support the California Watershed Restoration Management Act Legislation. He then provided the Board with a proposal for rule-making on watercourse crossing.

Ms. Cynthia Elkins, EPIC, asked that the late successional forest issue be addressed and perhaps new rules put forward.

Mr. Heald said that the discussion of late successional forest would be put on the Interim Committee agenda as a discussion item.

REPORT OF EXECUTIVE OFFICER

Mr. Christopher Rowney, Executive Officer for the Board, provided the Board with the draft Annual Report for 1998/99. He reported that the Interim Committee meeting for November 15 was set for 8:00 a.m. here in the Resources Auditorium. The next full Board meeting was being scheduled for December 7, 1999.

Chairman Kerstiens expressed concern that enough could be accomplished in a one-day meeting.

Mr. Rowney said that looking at the regulatory calendar, the timing was such that a 45-Day Notice would have to be out by December 14, 1999.

There was then some discussion. It was decided to hold a Committee meeting on Monday, December 6, 1999, and a short full Board meeting on Tuesday, December 7, 1999.

Mr. Marckwald suggested that the agenda should allow for the Committee to reconvene on December 7 if necessary.

Mr. Rowney then referred to the draft travel schedule for the Board in 2000. He said that the May 2000 meeting would be the Joint meeting with the Fish and Game Commission at Bass Lake. The question is which day would be the field trip. There was then some discussion about other areas of the State to visit. Eureka and Jackson State Forest were some of the suggestions.

Mr. Heald said that if a 45-Day notice is put out on the Agency package, the hearing for that would be in February. He suggested that the hearing be held before the Committee meeting. Following a short discussion, it was agreed that the full Board could meet on Monday and Tuesday and the Committees on Wednesday.

Mr. Rowney reported that he attended the North Coast Water Quality Regional Control Board meeting last week to update the NCWQCB on Board activities. There was also a hearing on a civil penalty issue. It was interesting to see how it was handled because, under SB 621, this Board could be faced with similar circumstances.

There was some further discussion regarding Board responsibilities. Board Counsel and the Executive Officer would look at those responsibilities and report back to the Board in December.

Mr. Rowney then said that tomorrow he would be providing a presentation at the Dead Wood Symposium in Reno. He said that he would draft a congratulatory letter for Brad Powell on his appointment as the new US Regional Forester for the Chairman's signature. Also, an invitation would be extended to Mr. Powell for a future Board meeting.

ADJOURNMENT

Chairman Kerstiens asked for a motion to adjourn the November 1999 meeting.

99-11-12 Mr. O'Dell moved to adjourn the November 1999 meeting. Mr. Flynn seconded the motion, and all were in favor.

Respectfully submitted,

ATTEST:

Christopher P. Rowney
Executive Officer

Robert J. Kerstiens
Chairman

Copies of the attendance sheet may be obtained from the Board office.